

**Stereo. H C J D A 38.
Judgment Sheet**

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No. Writ Petition No.214219 of 2018

Qamar Aziz etc. **Versus** Government of the Punjab, etc.

JUDGMENT

Date of Hearing:	04.09.2018.
Petitioner(s) by:	Malik Saleem Iqbal Awan, Advocate
Respondent(s) by:	Ch. Sultan Mehmood, Assistant Advocate General Punjab. Bashir Ahmad Goraya, CEO, DEA, Gujranwala. Muhammad Jamil Nasar, A.D. (Lit) office of CEO, DEA, Gujranwala.

Shahid Jamil Khan, J:- This judgment shall dispose of this and connected petition assailing order dated 10.05.2018 by Secretary School Education Department upon a direction in an earlier petition.

In pursuance of the direction impugned order dated 10.05.2018 was passed, operative part of which is also reproduced:-

“4. AND WHEREAS, it revealed from perusal of the record that the sanad of Shahadat-ul-Almia is not a prescribed qualification for the post of ESE (Arts), SESE (Arts) & SSE (Arts) under the policy ibid. The petitioners’ contention to consider their sanad of Shahadat-ul-Almia as equivalent to MA (Islamiyat) for the post of ESE (Arts), SESE (Arts) and SSE (Arts) is not covered under the policy ibid. However, the petitioners could avail benefit of their sanad by applying against the post of SESE (Arabic) for which “BA with Shahadat-ul-Almia” is a prescribed academic qualification. No such equivalence was issued by Qualification Equivalence Determination Committee (QEDC) of School Education Department for the sanad of Shahadat-ul-Almia with MA (Islamic Study/Islamiyat) for appointment against the post of ESE (Arts), SESE Arts) and SSE (Arts). Therefore, the decision of District Recruitment Committee, Lahore is in accordance with the Recruitment Policy 2017-18.”

[emphasis supplied]

2. Learned counsel for the petitioners submits that the questions directed to be addressed are not answered. It is reiterated that petitioners are possessing degree of Graduation with Sanad of Shahadat-ul-Almia, which was declared equal to M.A. Arabic and M.A. Islamic Studies by the Higher Education Commission (“HEC”). Petitioners applied for the posts of ESE (Arts), SESE (Arts) and SSE (Arts) on the basis of equivalence, however, applications were not entertained.

3. Learned AAG submitted that the direction in earlier petition was complied with as the petitioners are held entitled to apply for the post SESE (Arabic) for which prescribed qualification is BA with Shahadat-ul-Almia. He apprised that the issue had finally been resolved by Hon’ble Supreme Court vide judgment dated 09.10.2015 in Civil Petition No.1576 of 2013 (Muhammad Ilyas v Govt. of Punjab through Secretary Schools Education and others). He also relied upon judgment in Government of N.W.F.P., Health and Social Welfare Department through its Secretary v Dr. Sheikh Muzaffar Iqbal and others (1990 SCMR 1321), to submit that no vested right can be claimed against the eligibility fixed by competent authority.

In rebuttal, learned counsel for the petitioners submitted that judgment of learned Single Bench of this Court in W.P. No.3774 of 2009 was not considered. He placed reliance on judgment in Sanaullah Khan and others v District Returning Officer, Mianwali and others (PLD 2005 SC 858). Finally, he has read relevant paragraph from letter dated 23.01.2018 by HEC to submit that petitioners are entitled to be considered for appointment against the posts in question on the basis of Sanad of Shahadat-ul-Almia with B.A.

4. Heard. Record perused.

5. It is not denied that petitioners applied for the posts of ESE (Arts), SESE (Arts) and SSE (Arts) on the basis of Shahadat-ul-Almia with degree of Graduation, whereas the equivalence given by HEC vide letter dated 23.01.2018 is for Arabic/Islamic Studies. Whereas respondent has admitted, in the impugned order, that petitioners are entitled to apply for the post of SESE (Arabic).

6. The proposition of petitioners' right of being considered for appointment against a post for teaching Islamic Studies has already been settled by the judgment of Hon'ble Supreme Court in Muhammad Ilyas' case (Supra), operative part of which is reproduced:-

“4. According to the HECP the equivalence of the petitioner's Sanad to M.A. (Arabic)/Islamic Studies renders him fit for teaching the subjects of Arabic/Islamic Studies in Colleges and Universities. It is contended by the learned counsel for the petitioner that the subject of Islamic Studies in the curriculum of Colleges and Universities is the same as 'Islamiyat' in the Secondary Schools; therefore the petitioner could not have been disqualified from appointment.

5. The letter dated 14.04.2009 specifically states that the candidate holding the Sanad as held by the petitioner is eligible to apply for the post of SESE (Arabic) in Secondary Schools. The clear inference is that for the purposes of Secondary School education, the Provincial Government does not consider the Sanad held by the petitioner to be suitable for teaching the subject of Islamiyat. The Provincial Government's decision concerns a policy issue on which subject this Court is not well versed to give a finding. In this behalf, we are fortified with the rule laid down in the case of **Dossani Travels Pvt. Ltd vs. Travels Shop Pvt. Ltd.** (PLD 2014 SC 1).

[emphasis supplied]

7. It is discernible from the verdict that prescription of qualification by Provincial Government is a policy matter. The issue before Hon'ble Supreme Court was of appointment against a post for teaching Islamic Studies which was decided otherwise despite the fact that equivalence was granted by HEC. It can safely be deduced that to have equivalence by HEC is an independent entitlement, however, to apply for post on the basis of such equivalence is

another issue and the Hon'ble Supreme Court has laid down that it relates to policy matter, therefore, cannot be interfered with. To fix an educational qualification or eligibility criteria for appointment against a particular post is a policy matter, because only employer knows the requirements and can determine suitability of qualification for that post.

In Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v Hayat Hussain and others (2016 SCMR 1021), Hon'ble Supreme Court held that the determination of eligibility for promotion is an administrative matter and policy decision falling within the exclusive domain of Government and that no vested right is involved. Relevant excerpt is reproduced:-

"8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below:-

"In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it

cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ. (emphasis supplied)

[emphasis supplied]

In Mumtaz Ali Bohio and 24 others v Federal Public Service Commission through Chairman at Islamabad and another (2002 SCMR 772), it was ruled that ‘*Public Service Commission could make any alteration in the recruitment policy before finalization of appointments*’.

The judgment in Dr. Sheikh Muzaffar Iqbal’s case (supra) relied upon by learned AAG is in line, wherein it was held that Government has right to enhance the qualification and standards for recruitment and that petitioners could not claim vested right against retrospective application of such rules.

8. If the Government has right to enhance the qualification and fix standards for appointment against a post, whether this right can be taken away, as is being claimed by the petitioners, on the basis of equivalence granted by HEC. To answer this proposition and binding force of the equivalence granted by it, provision of Section 10 of the Higher Education Commission Ordinance, 2002 are examined, subsection (1) of which is reproduced;

“10. Powers and Functions of the Commission.

(1) For evaluation, improvement, and promotion of higher education, research and development, the commission may”

Power of HEC is to the extent of higher education, its evaluation, improvement, promotion, alongwith research and development. HEC is a regulator for maintenance and improvement of higher education under the Federation. The clauses (a) to (y) under this subsection are describing the

functions, which cannot be interpreted in any way to enhance the powers given by the legislature in this subsection. In other words the equivalence certificate issued under clause (o) of this subsection cannot be taken as binding advice to a Government for recruitment against any post. The clause (o) is also reproduced;

“(o) determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad.”

Purpose of this equivalence, essentially, is evaluation, promotion or improvement of higher education and not recommendation for appointment against any post. Clause (q) assigns a function of ‘providing guidelines for Individual Institutions (Educational Institutions not the Government) for minimum criteria and qualifications etc. for appointment and service of faculty. Specific use of the words “Individual Institutions” exclude the Government and Schools, Colleges being run by the Government.

The equivalence granted vide letter dated 23.01.2018 by HEC might be a recommendation for Individual Education Institution under clause (q), but cannot be held as binding for recruitment by the Government. Operative part of the letter is reproduced;

“With reference to your application dated January 22, 2018 on the subject, it is informed that as per decision of the Equivalence Committee of erstwhile UGC, the Higher Education Commission recognizes the Sanad “Shahdatul Almiya fil Uloomal Arabia wal Islamia” held by you from Tanzeem ul Madaris, Ahle Sunnat, Lahore as equivalent to M.A Arabic/Islamic Studies involving 16-year of schooling for the purpose of teaching Arabic and Islamic Studies in **Educational Institutions** and for **pursuing higher studies**.”

[emphasis supplied]

The petitioners in this case have applied for the posts of ESE (Arts), SESE (Arts) and SSE (Arts), which do not come within the purview of this equivalence certificate. Even otherwise

this equivalence is for ‘Educational Institutions’ and for ‘pursuing higher studies’.

9. Courts are not well versed technically to call in question or replace the prescribed educational qualification by competent authority or Government under ordinary circumstances. In a recent judgment, *National Engineering Services Pakistan [NESPAK] (Pvt.) Limited and others v Kamil Khan Mumtaz and others* (2018 SCMR, 211), the Apex Court while endorsing the view in *Doassani Travels’ Case* held;

“49.... it was even otherwise beyond the jurisdictional domain of the High Court in exercise of its powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to delve into highly technical and purely policy issues which were better left to be dealt with by experts having relevant knowledge, training and expertise in their respective fields and the competent authorities authorized and empowered by law to do so.”

In *Doassani Travels’ Case* it is enunciated that a policy decision by competent authority, cannot be annulled unless any illegality, arbitrariness or malafide is established. In *Messrs Al-Rahman Travels and Tours (Pvt.) Ltd. and others v Ministry of Religious Affairs, Hajj, Zakat and Ushr through Secretary and others* (2011 SCMR 1621), the August Court held that a policy can only be called in question if it is violative of fundamental rights or is in conflict with any provision of law.

10. The judgment relied upon by learned counsel for the petitioners in W.P. No.3774 of 2009 by learned Single Bench of this Court has admittedly been passed without discussing the above quoted judgment in *Muhammad Ilyas’ case* (*supra*) by Apex Court.

So far judgment by Apex Court in *Sanaullah Khan’s case* is concerned, the same was admittedly passed on Election matter. Operative part of which is reproduced hereunder:-

“28. Thus, it is concluded that:-

(i) If “Sanad” i.e. Shahadat-ul-Almia-Fil Uloom-UI-Arabia-wal-Islamia obtained by a candidate from a “Deem-Madrasah” (Seminary), which is duly recognized by UGC/HEC and its holder had passed examination of additional subjects as it has been mentioned in Notification dated 17th November, 1982 (No.8-418/Acad/82/128) issued by UGC/HEC and equivalence certificate has also been issued by Higher Education Commission under section 10(0) of the Higher Education M Commission Ordinance, 2002, then it is acceptable for the purpose of employment and for any other purpose including the elections of Local Government.

[emphasis supplied]

The underlined part of this judgment appears to be an *obiter dictum*, which no doubt is binding, yet this judgment has not addressed whether Government or any other employer is bound to offer employment on this basis, whereas the judgment in *Muhammad Ilyas’ case*, quoted *supra*, clearly says that to prescribe an educational qualification for particular post, is a policy matter, which cannot ordinarily be interfered by the Courts.

11. The judgment in *Muhammad Ilyas’ case (supra)* by the Apex Court is binding on the respondents and on this Court under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 which has addressed the proposition, therefore, the impugned order is found to have been passed in accordance with this judgment.

This petition alongwith connected petition is **dismissed**.

(Shahid Jamil Khan)
Judge

Approved for Reporting

Judge